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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,747

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Steven E. Gradl

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EXAMINER

BRITTAIN, JAMES R

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/810,747	Applicant(s) GRADL, STEVEN E.	
	Examiner James R. Brittain	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I in the reply filed on October 26, 2005 is acknowledged. The traversal is on the ground(s) that it is alleged that the claimed method requires the use of the claimed reclosable zipper strip and that a search for art pertinent to the claimed method is coextensive with a search for art pertinent to the claimed closure and further that the use of closure strips is not documented in the construction arts. This is not found persuasive because only one-way distinctness is required for establishing a restriction between article and method claims and this is set out in restriction requirement mailed September 30, 2005. The alternative use sets out a materially different process and establishes one-way distinctness. The searches do not overlap as shown by the separate classification of the two inventions as set forth in the restriction requirement mailed September 30, 2005. The use of closure profiles in the construction arts is obviously viable for windows or covers as it would be useful in maintaining a closure from the elements.

The requirement is still deemed proper and is therefore made FINAL.

Claims 14-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 26, 2005.

Specification

The specification is objected to because the term "EVA" is used without the actual substance being identified therein. While the use of the abbreviation is permitted applicant must

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amend the specification to show that it stands for ethylene vinyl acetate so as to complete the meaning. Correction is required. See MPEP § 608.01(b).

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first profile member, the second profile member, and each of the sealant layers formed from the same material (claim 23) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

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Claims 6, 18 and 22 are objected to because of the following informalities: The term “sealant” (claim 18, line 9) lacks clear antecedent basis and --sealant layer-- is suggested and the term “the sealant layers” (claim 6, line 1; claim 22, line 1) lacks antecedent basis since the antecedent term is “a sealant layer formed on the outer surface of at least one flange of the first profile member and the second profile member, the sealant layer” (claim 1, lines 8, 9) thereby indicating there can be but one as shown by “the”, so the plural is objected to. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 23 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 23 requires the first profile member, the second profile member, and each of the sealant layers to be formed from the same material. There is no support for this claim in the application as filed.

Applicant asserts provides the following statement for support from the October 26, 2005 communication on page 8, ¶3:

Claim 23 is supported throughout the specification, particularly by paragraph [0011].

Paragraph [0011] is reproduced below:

[0011] Each of the sealant layers can be extruded with the remaining portions of the first and second profile members. The sealant layers are preferably formed from a second material while the remaining portions of the first and second profile members are formed from a first material. Preferably, the first material is a low density polyethylene, while the second material that forms the sealant layer is an EVA sealant layer that melts at a lower temperature than the low density polyethylene.

There is no statement here that applicant's invention is forming the sealant layers from the same material as the profile members. The term "preferably" does not state provide antecedent basis for enablement to one having ordinary skill in the art for unstated embodiments and what materials they would be made of.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 8-10 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Malin et al. (US 5638586).

Malin et al. (figure 4) teaches reclosable zipper structure comprising: a first profile member having a base, an interlocking closure element extending from the base and at least one flange 56 extending from the base, the flange having an inner surface and an outer surface; a second profile member having a base, an interlocking closure element extending from the base

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and at least one flange 56 extending from the base, the flange having an inner surface and an outer surface; a sealant layer 60 formed on the outer surface of at least one flange of the first profile member and the second profile member, the sealant layer protruding from the flange; and a standoff area 58 formed on the inner surface of the flange having the sealant layer. As to claim 2, the standoff layer 58 is generally aligned with the sealant layer 60. In regard to claims 3 and 4, the first and second profile members are formed from polyethylene (col. 5, lines 66-67) and the sealant layer is formed from the heat activated adhesive ethylene vinyl acetate (col. 5, lines 60-65). As to claim 6, the sealant layer 60 is inherently capable of being extruded with the first and second profile members. In regard to claim 8, the lower sealant layer 60 is formed at the edge of the flange 56. As to claim 9, the sealant layer 60 is formed on the flanges of both the first and second profile members. In regard to claim 10, the first and second profile members include flanges 62 opposite the flanges 56. As to claim 13, the pair of flanges 56, 62 on each of the first and second profile members extend in opposite directions from the bases of the first and second profile members.

Claims 18, 19 and 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tomic et al. (US 5655273).

Tomic et al. (figure 1) teaches a reclosable zipper comprising: a first profile member having a base, an interlocking closure element extending from the base and a pair of flanges 34, 36 each extending from the base, each flange having an inner surface, an outer surface and an edge spaced from the interlocking closure element; a second profile member having a base, an interlocking closure element extending from the base and a pair of flanges 34, 36 each extending from the base, each flange having an inner surface, an outer surface and an edge spaced from the

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interlocking closure element; and a sealant layer 62, 64 formed on the outer surface of respective flanges 34, 36 of both the first profile member and the second profile member, each sealant layer protruding from the outer surface of the respective flange. In regard to claim 19, Tomic et al. indicates that different materials can be used for the profile members and sealant layers (col. 5, lines 13-47).

Claims 18, 21 and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Matthews (US 6154934).

Matthews (figure 1) teaches as prior art a reclosable zipper comprising: a first profile member having a base, an interlocking closure element extending from the base and a pair of flanges 18, 22 each extending from the base, each flange having an inner surface, an outer surface and an edge spaced from the interlocking closure element; a second profile member having a base, an interlocking closure element extending from the base and a pair of flanges 18, 22 each extending from the base, each flange having an inner surface, an outer surface and an edge spaced from the interlocking closure element; and a sealant layer in the form of fusible ribs 24 formed on the outer surface of respective flanges 18, 22 of both the first profile member and the second profile member, each sealant layer rib 24 protruding from the outer surface of the respective flange. In regard to claim 23, Matthews indicates that the same material can be used for the profile members and sealant layers (col. 1, lines 43-54).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malin et al. (US 5638586) in view of Kettner (US 5749658).

Malin et al. (figure 4) teaches reclosable zipper structure comprising: a first profile member having a base, an interlocking closure element extending from the base and at least one flange 56 extending from the base, the flange having an inner surface and an outer surface; a second profile member having a base, an interlocking closure element extending from the base and at least one flange 56 extending from the base, the flange having an inner surface and an outer surface; a sealant layer 60 formed on the outer surface of at least one flange of the first profile member and the second profile member, the sealant layer protruding from the flange; and a standoff area 58 formed on the inner surface of the flange having the sealant layer. The difference is that the sealant layer that has a beaded outer appearance is not “generally teardrop shape”. However, Kettner (figures 5a-5c) shows various shapes of beads or layers and that of figure 5a shows a bead that is generally teardrop shaped and further establishes that it is within the level of skill in the art to vary the shape of the sealant layer. Therefore it would have been obvious to modify the device of Malin et al. so that the sealant layer is generally teardrop shaped as taught by Kettner to be within the level of skill in the art.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malin et al. (US 5638586) in view of Offa-Jones (US 2002/0162200).

Malin et al. (figure 4) teaches reclosable zipper structure comprising: a first profile member having a base, an interlocking closure element extending from the base and at least one flange 56 extending from the base, the flange having an inner surface and an outer surface; a

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second profile member having a base, an interlocking closure element extending from the base and at least one flange 56 extending from the base, the flange having an inner surface and an outer surface; a sealant layer 60 formed on the outer surface of at least one flange of the first profile member and the second profile member, the sealant layer protruding from the flange; and a standoff area 58 formed on the inner surface of the flange having the sealant layer. The difference is that the standoff areas are formed from a different material. However, Offa-Jones (figure) teaches the location of protruding posts 24 and heels 28 over EVA sealant layers 32 that are of the same material as the profile members so as to withstand pressure. Therefore, it would have been obvious to modify the fastener of Malin et al. so that the same material is used for the standoff areas in view of Offa-Jones teaching that the material of the profile members can be chosen to provide standoff areas that are resistant to pressure.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tomic et al. (US 5655273) in view of Kettner (US 5749658).

Tomic et al. (figure 1) teaches a reclosable zipper comprising: a first profile member having a base, an interlocking closure element extending from the base and a pair of flanges 34, 36 each extending from the base, each flange having an inner surface, an outer surface and an edge spaced from the interlocking closure element; a second profile member having a base, an interlocking closure element extending from the base and a pair of flanges 34, 36 each extending from the base, each flange having an inner surface, an outer surface and an edge spaced from the interlocking closure element; and a sealant layer 62, 64 formed on the outer surface of respective flanges 34, 36 of both the first profile member and the second profile member, each sealant layer protruding from the outer surface of the respective flange. The difference is that the sealant layer

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that has a layered outer appearance is not “generally teardrop shape”. However, Kettner (figures 5a-5c) shows various shapes of beads or layers and that of figure 5a shows a bead that is generally teardrop shaped and further establishes that it is within the level of skill in the art to vary the shape of the sealant layer. Therefore it would have been obvious to modify the device of Tomic et al. so that the sealant layer is generally teardrop shaped as taught by Kettner to be within the level of skill in the art.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomic et al. (US 5655273) in view of Malin et al. (US 5638586).

Tomic et al. (figure 1) teaches a reclosable zipper comprising: a first profile member having a base, an interlocking closure element extending from the base and a pair of flanges 34, 36 each extending from the base, each flange having an inner surface, an outer surface and an edge spaced from the interlocking closure element; a second profile member having a base, an interlocking closure element extending from the base and a pair of flanges 34, 36 each extending from the base, each flange having an inner surface, an outer surface and an edge spaced from the interlocking closure element; and a sealant layer 62, 64 formed on the outer surface of respective flanges 34, 36 of both the first profile member and the second profile member, each sealant layer protruding from the outer surface of the respective flange. The difference is that the flanges lack standoff areas opposite the sealant layers. However, Malin et al. (figure 4) teaches reclosable zipper structure comprising: a first profile member having a base, an interlocking closure element extending from the base and at least one flange 56 extending from the base, the flange having an inner surface and an outer surface; a second profile member having a base, an interlocking closure element extending from the base and at least one flange 56 extending from

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the base, the flange having an inner surface and an outer surface; a sealant layer 60 formed on the outer surface of at least one flange of the first profile member and the second profile member, the sealant layer protruding from the flange; and a standoff area 58 formed on the inner surface of the flange having the sealant layer. The standoff area 58 function to both aid in gripping and inhibit the sealing of the flanges 56 to one another as they are being secured to the sheet material (col. 5, lines 48-59). As it would be beneficial to make the fastener of Tomic et al. easier to grip and also improve its assembly on the sheet material, it would have been obvious to provide the inner face of each flange with a standoff area as taught by Malin et al. to provide such beneficial functions.

Conclusion

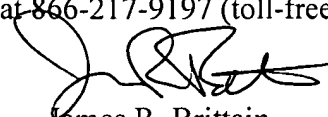
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent of May et al. (US 5660479, figure 2) teaches pertinent fastener structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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James R. Brittain
Primary Examiner
Art Unit 3677

JRB